

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

CONN APPLIANCES, INC.,
Plaintiff,

v.

VERONICA DAVIS,
Defendant.

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Civil Action No. 4:19-cv-01097

PLAINTIFF’S MOTION TO STAY PROCEEDINGS

Plaintiff Conn Appliances, Inc. (“Conn Appliances”) moves this Court to stay this action pending the resolution of Conn Appliances’ appeal in a substantively related matter pending before the United States Court of Appeals for the Fifth Circuit.¹

I.

In an underlying arbitration, Defendant Veronica Davis (“Ms. Davis”) alleged Conn Appliances violated provisions of the Telephone Consumer Protection Act (“TCPA”) by calling her mobile telephone in an attempt to collect overdue payments owed under a retail installment contract. *See* (Doc. 1, Page 4 of 11). Ms. Davis and Conn Appliances (the “Parties”) arbitrated the dispute pursuant to the terms of an agreement that contained the following limitation on the arbitrator’s power: “The arbitrator may not award relief in a form or amount not allowed by law.” (*Id.*).

On March 25, 2019, the arbitrator issued an Award in Ms. Davis’ favor, *see* (Doc. 1-7), which Conn Appliances contends violates the foregoing restriction. Conn Appliances therefore initiated this proceeding pursuant to 9 U.S.C. § 10(a)(4) to vacate the Award. *See generally*

¹ This action was commenced on March 25, 2019, (Doc. 1), and this Motion is being served on Defendant Veronica Davis with the case-initiating documents. It consequently is not Conn Appliances’ intent for the Court to act on this Motion until Defendant Veronica Davis enters and appearance in this matter and takes a position on the requested relief.

(Doc. 1). This lawsuit, and the substantive matters raised herein, are materially indistinguishable from those at issue in a lawsuit previously styled *Conn Appliances, Inc. v. Johnnie Williams, Jr.* USDC No. 4:18-CV-3087 (the “Williams Proceeding”), which now is on appeal to the United States Court of Appeals for the Fifth Circuit.

II.

In the Williams Proceeding, Conn Appliances initiated suit to vacate an arbitration award issued in favor of Johnnie Williams, Jr. (“Mr. Williams”), because there too, the arbitrator issued the award without regard to the following limitation contained in an arbitration agreement that applied to Mr. Williams: “The arbitrator may not award relief in a form or amount not allowed by law.” (4:18-cv-03087, Doc. 1, Page 4 of 17).

United States District Judge Keith Ellison presided over the Williams Proceeding, but did not reach the merits of Conn Appliances’ § 10(a)(4) challenge. In that matter, the Court instead ruled this Court lacked personal jurisdiction over Mr. Williams (who is a citizen of Tennessee) and dismissed the case on February 11, 2019. (4:18-cv-03087, Doc. 19). On February 22, 2019, Conn Appliances appealed that ruling, *see* (4:18-CV-3087, Doc. 20), and the case since has been docketed as Fifth Circuit case No. 19-20139 (the “Williams Appeal”).

A briefing schedule has been issued in the Williams Appeal, and Conn Appliances’ opening brief is due April 22, 2019.

III.

There are several pertinent parallels between the substance and procedure of the Williams Appeal and this lawsuit, which warrant a stay of this matter pending resolution of the Williams Appeal. The alleged TCPA violations in both cases arose from telephone calls Conn

Appliances placed to mobile phones in an effort to collect overdue payments. Also, both Ms. Davis and Mr. Williams are citizens of Tennessee, but none of the calls to them originated from Tennessee (many instead originated from Texas), and there is no evidence Conn Appliances was concerned with locale when it made the calls or that Conn Appliances in anyway perceived it more or less advantageous to place the calls into Tennessee. Texas, by comparison, is Conn Appliances' principal place of business, the locale where many, if not all, of the pertinent calls originated, and the locale in which judgment and enforcement of the arbitration awards will be effectuated.

In the Williams Proceeding, Conn Appliances contended the foregoing considerations made Texas the proper forum to adjudicate whether the Williams arbitration award is enforceable. *See generally* (4:18-CV-3087, Doc. 15). The Court disagreed.

Subject to Conn Appliances' ongoing appeal of that ruling, Conn Appliances has invoked substantially similar considerations as the basis for personal jurisdiction over Ms. Davis in this matter. *See* (Doc. 1, Page 5 of 11 – 6 of 11). The jurisdictional considerations that are the focus of the Williams Appeal therefore directly overlap the jurisdictional considerations currently before this Court, *and it is the express intent of Conn Appliances to ensure this Court is notified of that overlap.*

Based on the following principles, Conn Appliances requests this Court stay this matter pending the outcome of the Williams Appeal.

IV.

Incidental “to a district court’s inherent power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants’ is ‘the power

to stay proceedings.’” *In re Beebe*, No. 95-20244, 1995 U.S. App. LEXIS 41303, *7 (5th Cir. 1995) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248 (1936)). “[H]ow this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* at **7 – 8. A pertinent consideration in this regard is “a stay must be ‘so framed in its inception that its force will be spent within reasonable limits, so far as they are susceptible of prevision and description.’” *Id.* at *8. As such, “before granting a stay pending resolution of another case, the court must carefully consider the time reasonably expected for resolution of the ‘other case,’ in light of the principle that ‘stay orders will be reversed when they are found to be immoderate or of an indefinite duration.’” *Id.* at **8 – 9.

Conn Appliances requests a stay of this matter for the duration of the Williams Appeal, given the identify of issues in the two cases. In no event will the requested stay occasion a delay of “indefinite duration.” As discussed above, the briefing schedule in the Williams Appeal already has issued. The request for stay therefore is intended to serve the interest of economy and conservation of judicial resources by saving the Court (and Parties) from adjudicating substantive issues that otherwise will be under consideration in the pending Williams Appeal.

V. CONCLUSION

WHEREFORE, Plaintiff Conn Appliances, Inc. respectfully requests this Court grant this Motion to Stay, suspend all litigation in this matter pending the outcome of the appeal in Fifth Circuit case number 19-20139, and grant Plaintiff Conn Appliances, Inc. all other relief to which it may be entitled.

March 29, 2019

Respectfully submitted,

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**COUNSEL FOR PLAINTIFF CONN
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CERTIFICATE OF SERVICE

Plaintiff Conn Appliances, Inc. (“Conn Appliances”) initiated this action on March 25, 2019 by filing a Motion and Application for Relief Regarding Arbitration Award (Doc. 1). Conn Appliances shall serve the Motion and Application for Relief on Ms. Davis pursuant to the terms of 9 U.S.C. § 12 and Federal Rule of Civil Procedure 4, and this Motion to Stay shall be included within that service packet.

/s/ Nolan C. Knight